opinion that where an appellant is desirous of arguing at the hearing of the appeal grounds of appeal not disclosed either in his notice of appeal or in his petition of appeal, he must apply by motion to the Court which is to hear the appeal to amend his notice of appeal and/or his petition of appeal by adding the new grounds to those stated therein. To this extent I consider that *Ng Guan Thong's*[5] *case* was correctly decided. The cases of *Willmott and McLaren*[6] where the Court allowed further grounds of appeal to be filed without the necessity of a formal application, show clearly that the Court viewed such a practice as extremely inconvenient and intended to discourage it.

As to the principles to be applied in considering whether the appellant should be allowed to amend his notice of appeal and/or petition of appeal out of time, I consider that the appellant must satisfy the Court, firstly, that circumstances exist which justify an extension of the time; and, secondly, that he has a reasonable prospect of success on the appeal on the new matters which he is desirous of raising at the hearing of the appeal by the proposed amendment. Each application, must, needless to say, be considered in the light of its own particular circumstances.

Applying these principles to the present case, there are here, in my opinion, no circumstances which justify an extension of the time. There was a change of solicitors before the hearing of the appeal, and the appellant's present solicitor was of opinion that the petition of appeal should be amended to include the amendments set forth in the notice of motion. Bearing in mind that the original petition of appeal had been settled by counsel, this was, in my opinion, no ground for allowing the application.

This would have been enough to dismiss the application but in my view the application failed also on its merits.

The appellant pleaded guilty unequivocally in the Court below. Section 305 of the Code precludes an accused person who has pleaded guilty and been convicted by the Court from appealing against conviction. His right of appeal is limited to the extent and legality of the sentence.

There is no question that the charge disclosed an offence. The learned President's minutes show that the charge was read and explained to the accused and that he understood it. It is not suggested here that the appellant did not understand English or that he failed to appreciate the consequences of his plea. Having pleaded guilty unequivocally, as I have said, the learned President recorded that plea and then took a summary of the facts. He was not obliged to record evidence on a plea of guilty save where the accused disputed the facts or where the facts disclosed no offence or an offence not charged or if the accused made a statement which clearly showed that he had not committed the offence charged. I can find none of these requisites here. The learned President, I have not the smallest doubt, was justified in convicting. The first two proposed amendments, therefore, could not be allowed.

As to the third proposed amendment, this is based on the decision in *Abu Bakar bin Alif v. R.*[9] where the learned Judge emphasised the importance of Magistrates calling for evidence or information regarding the background, antecedents or character before passing sentence on a convicted person. I wholeheartedly agree with these observations where the convicted person has been convicted of an offence involving an act of dishonesty or of violence, but in my view it can have no application to a charge under the Motor Vehicles (Driving Offences) Proclamation.

For these reasons, I dismissed the application.

Application dismissed.

Solicitors for the appellant: *S. M. Yong & Co.*

KOH HOR KHOON v. REGINA

[A. Cr. J. (Whitton J.) September 9, 1955]

[Singapore — Magistrate's Appeal No. 28 of 1955]

Bankruptcy Ordinance (Cap. 45), ss. 17, 107(1)(p) and 124 — Pledging otherwise than in the ordinary way of his trade goods obtained on credit and not paid for — Admission of certified copy of notes of public examination — Evidence Ordinance (Cap. 13), ss. 3 and 133.

This was an appeal against the conviction of the appellant on two charges under s. 107(1)(p) of the Bankruptcy Ordinance of pledging otherwise than in the ordinary way of his trade quantities of Japanese galvanised iron sheets which he had obtained on credit and had not paid for. At the trial a certified copy of the notes of evidence taken at the public examination of the appellant in bankruptcy proceedings was admitted in evidence. The appellant had said in the course of the public examination that he had pledged the galvanised iron sheets which he had obtained on credit and not paid for and got a loan of about $70,000 for it. One of the principal points argued on appeal was that the certified copy of the notes of evidence was wrongly admitted in evidence.

Held: (1) the notes of the public examination constituted a document within the meaning of s. 3 of the Evidence Ordinance and were therefore properly proved under s. 124 of the Bankruptcy Ordinance by production of a certified copy; (2) s. 17 of the Bankruptcy Ordinance overrides s. 133 of the Evidence Ordinance so far as the public examination of a bankrupt is concerned; (3) the notes of the public examination in this case were rightly admitted in evidence.

Case referred to:—

(1) *Rex v. Phillips* (1936) M.L.J. 131; (1936) S.S.L.R. 82.

MAGISTRATE'S APPEAL.

K. Seth (*Lee Kuan Yew* with him) for the appellant.

H. B. Livingstone (Crown Counsel) for the respondent.

Whitton J. : — The appellant in this case was convicted by a District Judge on two charges under section 107(1) of the Bankruptcy Ordinance (Cap. 45) of pledging quantities of Japanese galvanised iron sheets he had obtained on credit and had not paid for. He was sentenced to six months' imprisonment on each charge, the sentence to run consecutively.

The first ground of Appeal was that the Assistant Official Assignee who appeared for the prosecution commented in his formal address to the Court on the fact that the accused did not give evidence on oath. Even if there is any objection to such comment in a case tried without a jury it seems to me this is not an instance in point as examination of the District Judge's notes makes it clear that it was not on the accused's omission to give evidence on oath as such that the learned Assistant Official Assignee commented, but that he mentioned the circumstance in relation to evidence which had been given on oath by the accused at his Public Examination, evidence the accused now repudiated in a statement from the dock, that part of the goods pledged came from a certain firm named E. Ott & Co.

The next ground of appeal dealt with a submission that the Crown had not proved either that the pledged iron had come from E. Ott & Co., or that 100 tons, as was alleged, had been pledged. That a portion of it came from E. Ott & Co. is, I think, beyond dispute, even without relying on the statement of the accused in his Public Examination, in the light of the evidence for the Prosecution generally, and in particular of what was said by Loh Seng Chor, a former partner of the appellant:.

"The 100 tons pledged with Chop Ek Leong Hin came from E. Ott & Co. and other firms."

No suggestion was made that this witness was ill-disposed towards the appellant. On the other hand it is plain from Mr. Ballenand's evidence that in October and November Messrs. E. Ott & Co. delivered to the accused's firm very considerably greater quantities of iron than are referred to in the charges, so it cannot be said that the accused simply pledged whatever iron he had got from Messrs. E. Ott & Co. The question is whether the District Judge's specific finding that the 40 and 60 tons pledged to Ek Leong Hin Ltd. came from E. Ott & Co. can be said to have been satisfactorily established. In this connection the delivery orders (Ex. 10 and 11) and the documents of deposit (translations Ex. 7A and 8A) are of some importance and to some extent they both obviously relate to the same types and sizes of iron but it is not clear from the descriptions used whether in respect of all the items they relate to the same types, and I think all that can be said with safety about this documentary evidence is that it makes it appear probable that a considerable quantity of the E. Ott & Co. iron was pledged as alleged. Again the evidence as to the markings bears out the view some of the pledged iron came from E. Ott & Co., but does not carry us very far as to how much. In view of these considerations it seems to me the finding of the learned District Judge referred to above cannot be supported as far as the quantities are concerned without relying on the statements of the accused in his Public Examination. It is necessary, therefore, at this stage to consider these submissions that the convictions were against the weight of the evidence in conjunction with the question of the admissibility of the public examination statement.

Now in the course of his public examination the accused said he took the corrugated iron obtained from E. Ott & Co. to Ek Leong Hin and got a loan of about $70,000 for it. I would say straightaway that this evidence, if it was properly admitted, taken in conjunction with the other evidence adduced by the Crown conclusively proved the charges. It is perhaps worth pointing out in this connection that the documentary exhibits show the sums obtained on the two pledges totalled $70,000.

The admission of the public examination evidence was attacked on several grounds. Firstly it was said that only those parts of it relevant to the charges should have been received by the District Judge. Without expressing a general opinion on this point I would say that in this case the admission of the whole statement cannot have prejudiced the accused. That portion of it I have just referred to was most relevant and, as I have indicated, to my mind, if rightly admitted, must clinch the case for the Prosecution. If the whole statement was wrongly admitted it is a case, I think, to which section 440 of the Criminal Procedure Code should be applied.

The second line of attack was that the document had not been proved, and it was submitted that it was not a document within the meaning of section 124 of the Bankruptcy Ordinance (Cap. 45). The course adopted before the District Judge was that a clerk from the Official Assignee's Office identified a certain

document as a certified copy of the notes of the accused's public examination and the District Judge admitted this document on the strength of this identification. The question seems to be, then, analysing section 124, are the notes of a public examination a document "made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance"? When one regards the very comprehensive definition of the term "document" in section 3 of the Evidence Ordinance it is hard to resist the conclusion these notes of the public examination constitute a document. Again it cannot be denied, I feel, that they were made in the course of proceedings under the Ordinance. For these reasons I think this objection also cannot succeed and that the notes were properly proved.

Finally it was contended on behalf of the appellant that this evidence was vitiated by the omission of the District Judge to observe the provisions of section 133 of the Evidence Ordinance. Mr. Seth for the appellant admitted that there was authority against him in this contention in *Rex v. G. A. Phillips*[1]. Two criticisms were advanced on this judgment of Whitley J. — firstly that it wrongly expressed the view section 124 of the Bankruptcy Ordinance made a certified copy of such notes receivable in evidence in all legal proceedings whatever, a point I have already dealt with; and secondly that English cases did not constitute authority on the point at issue inasmuch as English law has no equivalent of section 133 of our Evidence Ordinance. Whitley J. expressed the opinion, however, that it was not necessary to decide the question upon the wording of section 132 [see now (Cap. 13) section 133] by itself inasmuch as that section deals with incriminating answers by an ordinary witness whereas the case before him dealt with answers by a bankrupt in the course of his public examination, a proceeding covered by section 17 of the Ordinance. With this opinion I respectfully agree. I do not think it can be correctly said the general provisions of law contained in section 2 and in section 133 of the Evidence Ordinance must overrule the specific provisions for procedure to govern the public examination of a bankrupt laid down in section 17 of the Bankruptcy Ordinance. Moreover when one considers the wide power given to the Court to put questions to the bankrupt and the unqualified obligation of the bankrupt to answer them under this section it is reasonable to suppose that, had the legislature intended to preserve to a bankrupt in those proceedings the well established ordinary right of a witness not to incriminate himself, it would have expressly said so. It is apposite also to bear in mind in this connection that while the corresponding provisions of the English bankruptcy legislature do not override any other statutory provisions they involve what is perhaps an even more drastic step, the overriding of the great maxim of English common law, "*nemo tenetur se ipsum accusare*", as far as public examinations of bankrupts are concerned. Once these views are established the relevance of English cases to the present one can no longer be denied, and I do not think I need say more beyond that. I concur with the view of Whitley J. in *Rex v. Phillips*[1] to the effect that section 17 of the Bankruptcy Ordinance overrides section 133 of the Evidence Ordinance as far as the public examination of a bankrupt is concerned. For these reasons this ground of appeal also must fail.

As to sentence, the Deputy Public Prosecutor stated he would have no objection to the sentences being made concurrent. Such an order will, I think, meet the requirements of justice. Accordingly the convictions are confirmed but the sentences will run concurrently instead of consecutively.

Appeal dismissed.

Solicitors for the appellant: *Laycock & Ong.*

CHIA WAN KIAT v. M. THEYNAPPA LTD.

[O. C. J. (Knight J.) April 18, 1955]

[Singapore — Originating Summons No. 41 of 1953]

Limitation Ordinance (Cap. 16), Arts. 110–112 — Limitation (Amendment) Ordinance, 1949 — Adverse possession.

A piece of land at Boon Teck Road used as a private burial ground belonged to four brothers as tenants-in-common. M. Theynappa Ltd. purchased the share of Chia Ann Siang, a co-owner in 1938 and had since been collecting rents and profits from all the squatters of the said land without accounting for same to the other three co-owners until 1952 when Government acquired the said land.

Chia Wan Kiat the personal representative of one of the co-owners (Chia Ann Liew decd.) claimed the deceased's share in the Government award. M. Theynappa Ltd. resisted this claim on the ground that the company had been in adverse possession of the whole land since 1938 (a period of about 15 years).

Held: (1) it could not be said that the purchase of the share and subsequently collecting and unlawfully retaining the whole amount accruing from the land, the respondent company could be deemed to have entered into possession of all of it; (2) in computing the 12 years' period of limitation prescribed by the Schedule to the Limitation Ordinance, the period commencing from February 15, 1942 and ending September 30, 1949 should be excluded by virtue of the Limitation (Amendment) Ordinance, 1949.

Case referred to:—

(1) *Custodian of Enemy Property v. V. Thaver* (1953) M.L.J. 189.

ORIGINATING SUMMONS.

N. A. Mallal and *Eric Choa* for the applicant.

K. Gould for the respondents.